

FREEBORN G. WATERS }
 vs. } MARCH TERM, 1848.
 REBECCA WATERS ET AL. }

[WILL, CONSTRUCTION OF—TRUSTEE AND CETERIS QUE TRUST.]

A TESTATOR, after disposing of certain portions of his estate, devised all the residue of his property to the complainant, in trust, to hold the income, rents and profits of one-third part of said residue for the use of his grandson, the defendant, during his life; such income, &c., to be paid to him, from time to time, as they might accrue, and after his death to his children, in fee; and failing children, to other grandchildren to whom the remaining two-thirds were in like manner devised. At the time of the testator's death, the grandson was indebted to him in a large sum of money; but, it appearing that the testator did not mean to regard him as his debtor in respect thereof, it was
 HELD—

That, to enforce the payment of this debt out of the defendant's share of this income and profits, would defeat the clear intention of the testator to provide his grandson a competent support.

That it was the duty of the complainant, the trustee, to retain the amount of a loss, occasioned by the failure of the defendant, to comply with the terms upon which he purchased a part of the trust estate, out of the income of said trust estate, payable to the defendant.

[The late Charles Waters, died on the 12th May, 1846, leaving a last will and testament, whereby, after sundry dispositions of a portion of his estate, he devised all the residue thereof, to the complainant, in trust, to hold the income interest, rents and profits, of one-third part of said residue, for the use of his grandson, the defendant, Charles A. Waters, during his life such income, &c., to be paid to him from time to time, as they might accrue; and after his death, to his children in fee, and failing children, to other grandchildren, to whom the remaining two-thirds were in like manner devised. Certain disputes arising amongst the devisees of deceased, a bill was filed in this court by the complainant, for the adjustment of their differences. A petition was subsequently filed by him, in the cause, stating that the devisee, Charles A. Waters, was indebted to the testator, in his lifetime, in a large sum of money, for which his share of the estate ought to be liable; that he